

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5973 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAMTUJI @ TINIYO SAMBHAJI THAKOR

Versus

STATE OF GUJARATS

Appearance:

THROUGH JAIL for Petitioner

Mr. Joshi, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/11/1999

ORAL JUDGEMENT

#. The petitioner herein, while under detention, approached this Court by an application which came to be treated as a petition. According to him, he is young, belongs to a poor family and he has been wrongly detained. Because of his circumstances, he has not been able to defend himself and represent against his detention.

#. As the petitioner is under detention and is not represented by any advocate, Mr. Prajapati present in Court has gracefully volunteered to assist the Court on behalf of the petitioner as Amicus Curiae. He has gone through the papers and submitted that the detaining authority while passing the impugned order has not taken into consideration the question of getting the appeal cancelled. It is revealed from the order that the petitioner was on bail when the detention order was passed and the authority has not considered the question of getting the bail cancelled. This would, therefore, be a case of non-application of mind as has been held by a Division Bench of this Court in the case of Yunusbhai Hasanbhai Ganchi v. District Magistrate in Letters Patent Appeal No.1056 of 1999 in Special Civil Application No.8650 of 1998. He, therefore, urged that the petition may be allowed.

#. Mr. Joshi, learned Assistant Government Pleader appearing for the respondent has produced before this Court the relevant papers. On perusal of the order of detention, it is clear that when the order was passed, the petitioner was released on bail. The detaining authority has observed that he has continued his anti-social activities after his release on bail and it is, therefore, necessary to detain him in order to prevent him from engaging in such activities and detention being the last remedy, the order came to be passed. It is, therefore, clear that the detaining authority has not taken into consideration the question of getting the bail cancelled. The Division Bench in the case of Yunusbhai Hasanbhai Ganchi (supra) observed as under :-

"In the instant case, the fact regarding detenu on bail was very much in the mind of the detaining authority. It is reflected in the grounds of detention. But he has not considered that the bail was likely to be continued in spite of the action being taken for cancellation of bail or that the said fact is reflected in the order of detention or in the grounds of detention.

10. In view of the fact that there is no application of mind on part of the detaining authority about this vital aspect, the subjective satisfaction can be said to be vitiated. Only on that ground, the Letters Patent Appeal deserves to be allowed and is, accordingly, allowed."

#. Facts of the present case are very similar and, therefore, in light of the above decision, the order in question would stand vitiated for want of application of mind by the detaining authority on question of possibility of cancellation of bail. The petition, therefore, deserves to be allowed.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 6th February, 1999 is hereby quashed and set aside. The petitioner-Ramtuji @ Tiniyo Sambhaji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L. DAVE, J.]

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